IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 211 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX
Versus
AMBICA MILLS LIMITED

Appearance:
MR B.B.Naik with MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

This Reference has been made of following questions at the instance of the Revenue and at the instance of the assessee. The only question referred at the instance of the Revenue is:-

"1. Whether, investment allowance and development rebate can be granted on the Bank Guarantee Commission paid in respect of deferred payment of outstanding amount on purchase price of machinery treated as `capital expenditure?".

2. At the instance of the assessee, the following questions have been referred:-

"2. Whether, the Appellate Tribunal has not erred in law and on facts in holding that the expenditure of Rs.32,621/- and Rs.38,498/- for A.Ys. 1977-78 and 1978-79 respectively was admissible to the assessee and it cannot be considered to be hit by the provisions of section 37(4) of the I.T. Act, 1961?"

"3. Whether, the assessee is entitled in law to the allowance of Rs.1,88,743/- though no demand was raised by the Customs Authority?".

"4. Whether, on the facts and in the circumstances of the case, the finding of the Appellate Tribunal that the creation of liability cannot wait till the demand notice is received and the amount of Rs.1,88,743/- has to be allowed on the basis of a provision made because the customs duty becomes payable on import is correct in law?".

"6. Whether, Investment allowance on the machinery worth Rs.2,54,380/- is not admissible under the Act?".

"7. Whether, the payment of sur-tax is not admissible expenditure while computing

the total income?".

"8. Whether, the factory road could not be treated as plant and therefore no investment allowance in respect of the cost of road was admissible?".

As dealt with in Para 6 to 13 on the statement of case of the Tribunal, we need not go in the questions referred by the assessee as despite notice the assessee has failed to appear. It appears that he is no longer interested in seeking answers of those questions. We, therefore, confine this order to only question referred at the instance of the Revenue.

3. Learned Counsel Shri B.B.Naik appearing for the Revenue relies on the decision of C.I.T. Vs. Sivakami Mills Ltd. reported in 1997 227 ITR 405, wherein it has been held that bank guarantee commission paid in respect of deferred payment of outstanding amount on purchase price of Machinery is a revenue expenditure and as such it will not qualify for investment allowance and development rebate. In view of the decision of the Supreme Court in the case of Sivakami Mills Ltd. (Supra), the question referred to at the instance of the Revenue is answered in favour of the Revenue and against the assessee.

(D.M.Dharmadhikari, CJ)

(M.S.Shah, J)

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